

ANDERSON TRUCKING SERVICE, :
INC., a Minnesota Corporation, and :
INSURANCE COMPANY OF NORTH :
AMERICA, a Pennsylvania Corporation, :
as Subrogee to the Interests of :
Anderson Trucking Service, Inc., :
Plaintiffs, : CIVIL NO. 4-97-CV-20474
:
vs. :
:
MIDAMERICAN ENERGY COMPANY, :
an Iowa Corporation, and : FINAL JURY INSTRUCTIONS
LARRY HUFF, Individually; and :
AVIATORS ANONYMOUS, INC., :
d/b/a JETSUN AVIATION CENTRE, :
Defendants. :

1. "Negligence" Defined
2. "Proper Lookout" Defined
3. Failure to Mitigate Damages
4. Negligent Operation of Aircraft
5. Employer Liability
6. "Fault" Defined
7. "Proximate Cause" Defined
8. Comparative Fault
9. Plaintiffs' Claim Against MidAmerican and Huff
10. Plaintiffs' Claim Against Jetsun
11. Comparative Fault: Negligence
12. Comparative Fault: Failure to Mitigate
13. Huff and MidAmerican's Defense: Jetsun's Fault
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15. Damages
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17. No Quotient Verdict
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INTRODUCTION

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law. Remember to review the preliminary instructions in addition to these instructions. You must not single out some instructions and ignore others because all are important. This is true even though those I gave you at the beginning of or during the trial are not repeated here.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices, or emotions.

INSTRUCTION NO. _____

“Negligence” means failure to use ordinary care. Ordinary care is the care that a reasonably prudent person would use under similar circumstances. “Negligence” is doing something a reasonably careful person would not do under similar circumstances, or failing to do something a reasonably careful person would do under similar circumstances.

The mere fact an accident occurred or a party was injured does not mean a party was negligent.

INSTRUCTION NO. _____

“Proper lookout” is the lookout a reasonable person would keep in the same or similar situation. It means more than looking and seeing. It includes being aware of the operation of the aircraft in relation to what the operator saw or should have seen.

INSTRUCTION NO. _____

Plaintiffs have a duty to take reasonable steps that would have lessened or reduced their claimed damages. This is known as mitigation of damages.

Defendants claim that Plaintiffs were at fault by failing to mitigate their damages. The failure to mitigate damages constitutes fault. "Failure to mitigate" means failing to exercise ordinary care to take reasonable steps that would have lessened or reduced any injuries or damages sustained.

If by slight expense and inconvenience a party exercising ordinary care could have reduced its damages, and failed to do so, it cannot recover for any damages that might have been avoided.

INSTRUCTION NO. _____

State law, federal regulations, and local ordinances prohibit a person from operating an aircraft on the ground in a careless or reckless manner so as to endanger the life or property of another. Federal regulations prohibit a person from operating an aircraft so close to another as to create a collision hazard. City ordinances provide that no person may park any aircraft in any area other than that prescribed by the Executive Director of the Sioux City Airport.

This presumption of negligence is not, however, conclusive, but may be overcome or outweighed by evidence in the case which satisfies your minds that, notwithstanding any failure to comply with the provisions of the law in question, that party acted as a reasonably prudent person would have acted under all the surrounding circumstances shown by the evidence in this case.

INSTRUCTION NO. _____

An employer is liable for the negligence or wrongful acts of an employee if the acts are done in the scope of the employment. Plaintiffs are liable for any negligent or wrongful acts of its employees. Jetsun is liable for any negligent or wrongful acts of its employees. MidAmerican is liable for any negligent or wrongful acts of its pilot, Larry Huff or other employees.

INSTRUCTION NO. _____

In these instructions, the term “fault” is used. Fault means one or more acts or omissions towards another which constitutes negligence, or failure to mitigate damages.

INSTRUCTION NO. _____

The conduct of a party is a “proximate cause” of damage when it is both a substantial factor in producing damage, and when the damage would not have happened but for the conduct. There can be more than one proximate cause of an injury or damage. When the fault of two or more separate parties is so related to an event that their combined fault, when viewed as a whole, is the cause of the event without which the event would not occur, then the fault of each party may be a proximate cause, provided the fault of each substantially contributes to Plaintiffs’ injuries.

“Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. _____

Damages may be the fault of more than one person. If you find the fault of more than one party was the cause of damage, you will then compare the fault of those parties. In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the Plaintiffs and the Defendants, and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each party's fault contributed to the damages.

Defendant Jetsun is to be treated as a separate party for the purpose of determining its percentage of fault. Defendants Larry Huff and MidAmerican Energy are to be treated as a single party for the purpose of determining their percentage of fault. Plaintiffs Anderson Trucking Service, Inc., and Insurance Company of North America are to be treated as a single party for the purpose of determining their percentage of fault.

INSTRUCTION NO. _____

Plaintiffs claim that Defendants MidAmerican and Larry Huff were at fault due to negligence.

To establish this claim, Plaintiffs must prove all of the following numbered propositions 1, 2 and 3:

1. MidAmerican and Huff were negligent while operating the airplane in one or more of the following ways:
 - a. failing to maintain an adequate distance between aircraft; or
 - b. improperly applying excessive power to the engine; or
 - c. improperly directing its operating engine so that the jet blast was pointed directly at the Anderson aircraft; or
 - d. otherwise operating its aircraft in an unsafe manner; or
 - e. failing to maintain a proper lookout.
2. This negligence was a proximate cause of damage to the Plaintiffs.
3. The amount of damage.

If Plaintiffs have failed to prove any of the numbered propositions, 1, 2 and 3, Plaintiffs are not entitled to damages. If Plaintiffs have proved all of these numbered propositions, you will consider the defenses of comparative fault and failure to mitigate as explained in other instructions.

INSTRUCTION NO. _____

Plaintiffs claim that Defendant Jetsun was at fault due to negligence:

To establish this claim, Plaintiffs must prove all of the following numbered propositions 1, 2 and 3:

1. Jetsun was negligent by allowing Anderson's airplane to be parked in close proximity to the hangar belonging to Defendant MidAmerican.
2. This negligence was a proximate cause of damage to Plaintiffs.
3. The amount of damage.

If Plaintiffs have failed to prove any of these numbered propositions, Plaintiffs are not entitled to damages. If Plaintiffs have proved all of these numbered propositions, you will consider the defenses of comparative fault and failure to mitigate as explained in other instructions.

INSTRUCTION NO. _____

All Defendants claim that Plaintiffs were at fault due to negligence.

A Defendant must prove both of the following numbered propositions 1 and 2:

1. Plaintiffs were at fault. To prove fault, a Defendant must prove Plaintiffs were negligent in one or more of the following ways:
 - a. In failing to engage the control gust locks while leaving the plane unattended; or
 - b. In parking the plane in a prohibited area; or
 - c. In failing to determine whether the aircraft had been moved or gust locks engaged.
2. Plaintiffs' fault was a proximate cause of Plaintiffs' damage.

If either of these numbered propositions is not proven, Defendants have not established this defense. If a Defendant has proved both of the numbered propositions 1 and 2, then you will assign a percentage of fault against Plaintiffs and include Plaintiffs' fault in the total percentage of fault found by you in answering the special verdicts.

INSTRUCTION NO. _____

All Defendants claim that Plaintiffs were at fault by failing to mitigate their damages.

A Defendant must prove both of the following propositions:

1. Plaintiffs were at fault by failing to mitigate damages.
2. Plaintiffs' fault was a proximate cause of Plaintiffs' damage.

If either of these propositions is not proven, Defendants have not established this defense. If a Defendant has proved both of these propositions, then you will assign a percentage of fault against Plaintiffs and include Plaintiffs' fault in the total percentage of fault found by you in answering the special verdicts.

INSTRUCTION NO. _____

Defendants Larry Huff and MidAmerican Energy Company claim that Defendant Jetsun was at fault due to negligence. To establish this defense, Defendants Larry Huff and MidAmerican Energy Company must prove both of the following numbered propositions 1 and 2:

1. Jetsun was negligent in one or more of the following ways:
 - a) allowing Anderson's airplane to be parked in a non-designated or prohibited area; or
 - b) in allowing Anderson's airplane to be parked in an area that prevented reasonable access to MidAmerican's hangar; or
 - c) in failing to communicate to the MidAmerican aircraft to wait until the Anderson aircraft was moved.
2. The negligence was a proximate cause of Plaintiffs' damage.

If Defendants Larry Huff and MidAmerican Energy Company have failed to prove either of these numbered propositions 1 or 2, then these Defendants have not proved their defense. If Defendants Huff and MidAmerican have proved both of these numbered propositions, then you will assign a percentage of fault against Jetsun and include Jetsun's fault in the total percentage of fault in answering the special verdicts.

INSTRUCTION NO. _____

Jetsun claims that MidAmerican and Huff were at fault due to negligence. To establish this defense Jetsun must prove both of the following numbered propositions 1 and 2:

1. That MidAmerican and Huff were at fault when Larry Huff failed to exercise reasonable care in one or more of the following ways:
 - a) by failing to maintain a safe operating distance between the MidAmerican aircraft and the Anderson aircraft; or
 - b) by applying excessive thrust to the MidAmerican aircraft; or
 - c) by failing to use an alternative manner to approach their hangar.
2. MidAmerican and Huff's fault was a proximate cause of Plaintiffs' damage.

If Jetsun has failed to prove either of these numbered propositions 1 or 2, then Jetsun has not proved its defense. If Jetsun has proved both of these numbered propositions, then you will assign a percentage of fault against MidAmerican and Huff and include MidAmerican and Huff's fault in the total percentage of fault in answering the special verdicts.

INSTRUCTION NO. _____

If you find Plaintiffs are entitled to recover damages, you shall consider whether Plaintiffs have proven they have suffered the following items. Plaintiffs claim damages for:

1. The reasonable cost of repair.
2. The reasonable costs for charter flights or replacement services incurred by Anderson due to loss of use of the aircraft during the time reasonably required to repair the aircraft.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. Your judgment must not be exercised arbitrarily, or out of sympathy or prejudice, for or against the parties.

The amounts, if any, you find for each of the above items will be used to answer the special verdicts. The amount you assess for any item of damage must not exceed the amount caused by the parties as proved by the evidence.

INSTRUCTION NO. _____

After you have compared the conduct of all parties, if you find that Plaintiffs were at fault, and that this fault was more than 50 percent of the total fault, Plaintiffs cannot recover damages.

However, if you find that Plaintiffs' fault was 50 percent or less of the total fault, then I will reduce the total damages by the percentage of fault you assign to Plaintiffs. If you assign to a party less than 50 percent of the total fault, that party will only be liable to the extent of the percentage of fault assigned by you. Plaintiffs can claim the entire amount awarded to Plaintiffs from any Defendant whose percentage of fault is found by you to be 50 percent or more. I will order Defendants to contribute to the payment of damages awarded on the basis of the percentages of fault you insert in your answers to the questions at the end of these instructions.

INSTRUCTION NO. _____

In arriving at an item of damage or any percentage of fault, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage or element of fault, and agreeing in advance that the average of those estimates shall be your item of damage or percentage of fault.

INSTRUCTION NO. _____

I am giving you a verdict form. Once you have finished responding to the issues in the verdict form, the form should be signed by the person you have selected to serve as presiding juror.

Your response to each of the special interrogatories must represent the considered judgment of each juror. Your answers must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of the other jurors or for the mere purpose of returning a verdict.

INSTRUCTION NO. ____

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members to act as presiding juror. The person so elected is responsible for the orderly, proper, and free discussion of the issues by any juror who wishes to express his or her views. He or she will supervise the balloting and sign the form or forms of verdict that are in accord with your decision and will also sign any written inquiries addressed to the Court. Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally fully covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

If you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone – including me – how your votes stand numerically.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering a jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth.

Dated at ____ a.m. on this ____ day of May, 1999.

CELESTE F. BREMER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ANDERSON TRUCKING SERVICE, :
INC., a Minnesota Corporation, and :
INSURANCE COMPANY OF NORTH :
AMERICA, a Pennsylvania Corporation, :
as Subrogee to the Interests of :
Anderson Trucking Service, Inc., :

Plaintiffs, :

vs. :

MIDAMERICAN ENERGY COMPANY, :
an Iowa Corporation, and :
LARRY HUFF, Individually; and :
AVIATORS ANONYMOUS, INC., :
d/b/a JETSUN AVIATION CENTRE, :

Defendants. :

CIVIL NO. 4-97-CV-20474

SPECIAL VERDICT FORM

1. Has it been established by a preponderance of the evidence that any of the parties were at fault?

A. (1) MidAmerican Energy Company and Larry Huff
_____ yes _____ no

(2) If yes, was this fault a proximate cause of Plaintiffs' damages?
_____ yes _____ no

B. (1) Jetsun Aviation
_____ yes _____ no

(2) If yes, was this fault a proximate cause of Plaintiffs' damages?
_____ yes _____ no

C. (1) Anderson Trucking and Insurance Company of North America
_____ yes _____ no

(2) If yes, was this fault a proximate cause of Plaintiffs' damages?
_____ yes _____ no

2. Using 100% as the total combined fault of all the parties for whom you have found fault, which was a proximate cause of Plaintiffs' damages, what percentage do you assign to each party? If you did not assign fault to a party, enter zero after their name.

A.	MidAmerican and Larry Huff	_____%
B.	Jetsun Aviation	_____%
C.	Anderson Trucking and Insurance Company of North America	_____%
	TOTAL	100%

3. What is the total amount of damages Plaintiffs have established. Do not take into consideration any reduction of damages for Plaintiffs' fault, if any.

A.	Repair cost	\$ _____
B.	Replacement services	\$ _____
	TOTAL	\$ _____

PRESIDING JUROR